



ALASKA CALIFORNIA FLORIDA MID-PACIFIC NORTHEAST NORTHERN ROCKIES  
NORTHWEST ROCKY MOUNTAIN WASHINGTON, D.C. INTERNATIONAL

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**VIA ELECTRONIC MAIL**

Lilian Dorka  
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By Mail and Email

Re: *Community Engagement in the Title VI Investigations in St. Francis Prayer Center, Case No. 01R-94-R5; Californians for Renewable Energy, Case No. 02R-00-R9; Sierra Club Lone Star Chapter, Case No. 01R-00-R6; Citizens for Alternatives to Radioactive Dumping, Case No. 09R-02-R6; and Ashurst Bar/Smith Community Organization, Case No. 06R-03-R4.*

Dear Ms. Dorka:

On behalf of St. Francis Prayer Center, complainant in Case No. 01R-94-R5; Californians for Renewable Energy ("CARE"), complainant in Case No. 02R-00-R9; Sierra Club Lone Star Chapter, complainant in Case No. 01R-00-R6; Citizens for Alternatives to Radioactive Dumping ("CARD"), complainant in Case No. 09R-02-R6; and Ashurst Bar/Smith Community Organization, complainant in Case No. 06R-03 (collectively, "Complainants"), Earthjustice and co-counsel submit this letter urging the U.S. Environmental Protection Agency ("EPA") and its Office of Civil Rights ("OCR") to engage with Complainants and other community stakeholders as OCR reinitiates investigations and moves toward resolution of their civil rights complaints.

As you may be aware, Complainants also filed the complaint in the pending action *Californians for Renewable Energy v. EPA*, Case No. 15 cv 03292 (N.D. Cal.) ("*CARE v. EPA*"), which alleges that EPA unreasonably delayed in investigating the five Title VI complaints filed by Complainants and accepted for investigation at least ten and as much as twenty-one years ago (the "Title VI Complaints"). As of the date of this letter, the matter remains referred to Magistrate Judge Laurel Beeler for settlement. Regardless of whether this matter is resolved by settlement or litigation, *Complainants strongly urge that OCR actively involve them and members of*

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*the affected communities in OCR's ongoing investigations and any resolution of the five underlying Title VI Complaints.*

From the dates they filed their Title VI Complaints to the present, Complainants have been animated by the hope that OCR will conduct thorough, not just *pro forma*, investigations and carry out its responsibility to enforce Title VI of the Civil Rights Act of 1964. But on June 3, 2016, OCR informed Complainants that it intended to issue a letter that would resolve the CARE Complaint, one of the five underlying Title VI Complaints, *without engaging in any renewed consultation or engagement* with the complainants or the affected community. It is our understanding that EPA may have reinitiated investigations into the other four Title VI Complaints, as well, and may similarly be moving toward resolution of these other Title VI Complaints without engaging Complainants. We urge OCR not to make this mistake.

Complainants have repeatedly asked EPA to engage them as key stakeholders in the investigative process. But to date, Complainants are aware of only one other instance in which OCR has contacted or interviewed Complainants in the underlying Title VI Complaints since the filing of the suit. That instance consisted of one telephone conference with the complainants in the Ashurst Bar/Smith Complaint in February 2016. Despite complainant Ashurst Bar/Smith Community Organization's request to discuss the investigation and potential remedies broadly, OCR sought to circumscribe the February call to a rote set of investigatory questions about individual experiences. Aside from this February 2016 call and OCR's June 3, 2016, call to convey that it was resolving the CARE Complaint, neither Complainants nor Complainants' counsel are aware of any other instances of OCR contacting Complainants or affected community members in the underlying Title VI Complaints since they filed the litigation or OCR reinitiated the investigations. OCR's intent to resolve the CARE Complaint without fully investigating the underlying allegations or hearing from the affected community about conditions today confirms Complainants' worst fears, that OCR would go through the motions of investigating and/or move toward preliminary or final resolution of the investigations, without further input from Complainants or other stakeholders.

A failure to engage with Complainants and affected communities during the Title VI investigation process is problematic and threatens to undermine the effectiveness of OCR's efforts for a number of reasons. First, the agency actions complained of in the Title VI Complaints took place in each case more than a decade ago. Given the passage of time, any investigation will be all the more difficult – witnesses are no longer available, memories become clouded, and documentation is harder to find. Complainants and community members are among the most knowledgeable resources to help OCR determine which allegations or impacts remain relevant, and whether time and conditions may have affected the salience of some allegations or impacts in the years since the filing of the Title VI Complaints.

Moreover, in each case the lingering effects of the challenged actions remain and Complainants and other community members are also in the best position to share information about what is happening today and potential remedies. Given that each community has had to

live with the impacts of the challenged action during the long pendency of its complaint, investigations into what happened so long ago will not at this point fully redress the alleged violations by recipients of federal funds, nor EPA's unreasonable delay. Yet recipients of federal funds should nonetheless be accountable for discriminatory policies and practices, and the continuing effects of such policies and practices should be addressed.

Consider the impacts of OCR's failure to investigate the St. Francis Prayer Center's allegation that the Michigan Department of Natural Resources ("MDEQ"), a recipient of federal funding, discriminated against residents of the City of Flint on the basis of race, color, and national origin. Life might have been different for Flint residents had OCR taken timely action on allegations that MDEQ failed to comply with civil rights law. Instead, children have been raised in the shadow of the Genesee Power Station and MDEQ understood that there would be no accountability for civil rights violations. These issues are not unique to Michigan, however. OCR's failures have meant that, similarly, children have grown up in the shadow of the expanded refinery in Beaumont, Texas; lived across the street from the Stone's Throw Landfill in Tallassee, Alabama; and attended schools downwind from two power stations with repeated air-emission violations in Pittsburg, California, the subject of the CARE Complaint. State and regional recipients of federal funds continue to grant permits to facilities in low-income communities of color while allegations that these same recipients are failing to comply with the procedural requirements of the law remain unresolved. The communities at the heart of the Title VI Complaints continue to be burdened by the negative impacts to human health and quality of life brought about by these decades-old decisions. The policies and procedures of these same agencies threaten to disproportionately burden communities on the basis of race and national origin in other contexts. Any attempts by OCR to resolve these Title VI Complaints would be foolhardy – not in the best interest of the Complainants, nor their neighbors, nor EPA -- if they were not informed by up-to-date information by the Complainants and other community stakeholders.

Moreover, communication and engagement with affected communities is good practice that builds trust between communities and OCR and confidence in the Title VI process generally. Complainants here, and many other parties that have filed Title VI complaints with EPA, are disheartened by a system that seems to ignore the very people the law was meant to protect. These complainants lose faith in a system that either fails to resolve the complaints at all – as in the instant situations to date – or resolves the complaints in a manner that is unresponsive to the complainants' actual injuries – as occurred in EPA's resolution of the *Angelita C.* complaint.<sup>1</sup> Indeed, it appears that OCR has failed to learn any lesson from the experience of moving forward with a resolution of *Angelita C.* after more than a decade without

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<sup>1</sup> See Center for Race, Poverty & the Environment, *A Right Without a Remedy: How the EPA Failed to Protect the Civil Rights of Latino Schoolchildren*, at 17 (2016), [https://www.dropbox.com/s/a3tc4ehd01c5fx0/Right%20without%20a%20Remedy%20FINAL\\_optimized.pdf?dl=0](https://www.dropbox.com/s/a3tc4ehd01c5fx0/Right%20without%20a%20Remedy%20FINAL_optimized.pdf?dl=0) (EPA's flawed investigation and settlement, which, among other things, included the exclusion of complainants from the investigation and resolution process, "compounded the harm from the decade-long investigation.").

consulting with complainants. Though Complainants have not yet received or reviewed OCR's letter resolving the CARE Complaint, it seems history is repeating itself. The news that EPA is moving forward without engaging CARE and other community-based stakeholders again raises serious concerns about OCR's civil rights compliance and enforcement program. This mismanagement of Title VI enforcement can have a chilling effect on community members that suffer environmental harms in violation of their civil rights, but who find no reason to initiate a Title VI process that they believe will ultimately prove nonresponsive. Implementation of Title VI does not have to be this way: other federal agencies such as the U.S. Department of Transportation have taken a lead in engaging with complainants and community members during the investigation and resolution process to ensure that complaints are resolved fairly for all parties involved.<sup>2</sup>

Engaging Complainants is critically important to the conduct and quality of the five investigations at issue in the litigation, particularly given the potential effects of the passage of time on the possibility of conducting a meaningful investigation. At the same time, these principles hold true for all Title VI complaints accepted for investigation by EPA. Complainants' lawsuit included a pattern and practice claim because, unfortunately, EPA's record reflects a systematic failure to conduct investigations in a timely or meaningful way. It violates both the letter and spirit of the law to conduct *pro forma* investigations to give the appearance that OCR is meeting deadlines.

EPA has reiterated that one of the EPA's goals in its enforcement of Title VI "is to promote appropriate involvement by complainants and recipients in the External Compliance complaint process." See EPA, Interim Case Resolution Manual 14 (Dec. 15, 2015), [https://www.epa.gov/sites/production/files/2015-12/documents/ocr\\_crm\\_final.pdf](https://www.epa.gov/sites/production/files/2015-12/documents/ocr_crm_final.pdf); EPA, Role of Complainants and Recipients in the Title VI Complaint and Resolution Process 2 (May 4, 2015), <https://assets.documentcloud.org/documents/2178959/final-roles-of-complainants-and-recipients-issue.pdf>. Similarly, EPA stresses that under the principles of environmental justice, "meaningful involvement" means that "[p]eople have an opportunity to participate in decisions about activities that may affect their environment and/or health" and "[d]ecision makers will

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<sup>2</sup> See Erin Gaines & Kelly Haragan, "Using Civil Rights Laws for Environmental Justice Along the Texas Gulf Coast," (May 2016), available at <http://povertylaw.org/clearinghouse/stories> (noting that, during Federal Highway Administration's investigation of Title VI complaint, "[a] civil rights investigator visited Hillcrest several times to meet with residents about the participation process, the potential impact from the bridge, and hoped-for outcomes. This serious investigation and the delay in a billion-dollar transportation project proved to be the leverage that led to settlement discussions with various local and state governmental stakeholders."); see also Texas Housers, "Justice in Corpus Christi: Residents of Segregated Neighborhood Win Historic Civil Rights Agreement," <https://texashousers.net/2015/12/28/justice-in-corpus-christi-residents-of-segregated-neighborhood-win-historic-civil-rights-agreement/> (video, at 1:13, describing how the citizens alliance worked with the Federal Highway Administration OCR in a process that involved a lot of "back and forth" and "a lot of long hours" of providing input into a mitigation agreement).

seek out and facilitate the involvement of those potentially affected.” EPA, Learn About Environmental Justice, <https://www.epa.gov/environmentaljustice/learn-about-environmental-justice>. EPA must not stray from its goals for implementing Title VI and the principles of environmental justice with respect to OCR’s investigation into these five Title VI administrative complaints. We thus strongly urge OCR to contact, seek input from, and provide feedback to Complainants and other affected community members to inform any investigation and prior to resolution of any of the Title VI Complaints that underlie the *CARE v. EPA* action. We strongly urge OCR to refrain from completing any investigation or resolving the CARE Complaint or any of the other long-delayed cases that are the subject of the Title VI Complaint, and first consult with Complainants and the community to determine the proper scope of the investigation, have the opportunity to benefit from relevant evidence, and consider what remedial options might best address adverse impacts caused by the challenged actions, policies and practices over time.

Sincerely,



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